APPENDIX "A"
OPINION OF THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1106—August Term, 1981
(Argued May 11, 1982 Decided July 23, 1982)
Docket No. 81-1481

UNITED STATES OF AMERICA,

Appellee,

-v-

KAARE GILBOE, JR.,

Defendant-Appellant.

Before:
FEINBERG, *Chief Judge,*
NEWMAN and WINTER, *Circuit Judges*

Appeal by defendant Kaare Gilboe, Jr. from a judgment of conviction in the United States District Court for the Southern District of New York, Richard Owen, J., after a jury trial, on all eight counts of an indictment charging wire fraud in violation of 18 U.S.C. §1343 and interstate and international transportation of funds obtained by fraud in violation of 18 U.S.C. §2314.

Judgment affirmed.

NEAL FACTOR, Long Island City, N.Y., *for Defendant-Appellant*

MICHAEL S. FELDBERG, Assistant United States Attorney for the Southern District of New York (John S. Martin, Jr., United States Attorney for the Southern District of New York, Walter P. Loughlin, Assistant United States Attorney, of Counsel), *for Appellee.*

FEINBERG, *Chief Judge:*

Defendant Kaare Gilboe, Jr. appeals from a judgment of conviction in the United States District Court for the Southern District of New York, after a jury trial before Judge Richard Owen, on all eight counts of an indictment charging wire fraud in violation of 18 U.S.C. §1343 and transportation of funds obtained by fraud in violation of 18 U.S.C. §2314. Defendant was sentenced to a total of 20 years in prison on seven of the eight counts and fined $43,000. On the remaining count, defendant's sentence was suspended with a five-year probationary period to commence upon his release from prison but conditioned upon restitution to the victims of his fraudulent scheme. Defendant is presently incarcerated. His principal arguments on appeal are that the district court had no jurisdiction over the offenses charged and that venue was improper in the Southern District of New York. For the reasons stated below, we affirm the judgment of the district court.

I. FACTS

Defendant's massive fraud on the international shipping industry left victims on the continents of Asia, North America and Europe. The scheme involved several other apparently fraudulent transactions but the charges against defendant in this case stem from two shipments of grain ar-

ranged by defendant to the People's Republic of China, one from Argentina and the other from the United States. Although defendant's scheme was complex, we set forth below only the facts pertinent to the issues before us.

Negotiations for the grain shipment from Argentina began in late 1978 when defendant, a citizen of Norway and resident of Hong Kong, was general manager of a Hong Kong ship brokerage firm. Defendant represented to a corporation owned by the People's Republic of China that he was an agent for shipowners with ships available to transport grain. These ships did not exist. But once defendant secured the contract to transport grain, he obtained ships through negotiations with the Manhattan office of a shipowner, using telex and telephone communication channels, and substituted those ships for the non-existent ones. When the grain was loaded in Argentina in February 1979, the Chinese corporation paid defendant $617,064.49, as required. At about the same time, defendant was supposed to pay the shipowner 90% of the agreed freight due. Instead of doing so, however, defendant caused most of the money he received to be transferred to a bank in the Bahamas using a Manhattan branch of Barclays Bank International. Defendant claimed at trial that a Bahamian company was supposed to pay the shipowner. The victims of defendant's scheme were the shipowner and the People's Republic of China, which subsequently paid $242,117.40 more than the original contract required in order to avoid the shipowner's lien on the grain.

The grain shipments from New Orleans involved the same complicated type of transaction, although defendant used an office in Tokyo and different business connections. This time the scheme netted even greater deposits in the Bahamian bank account, at the expense again of the People's Republic of China as well as three shipowners. In August 1980, a corporation owned by the People's Republic of China paid defendant $1,015,740.67 for one shipment of grain, $968,624.08 for a second and

$944,999.19 for a third. At defendant's direction, this money was forwarded from the Bank of China, Peking, to the Bank of Tokyo in New York, to the Manhattan office of the Royal Bank & Trust Company, to the Republic National Bank in Manhattan, to the Channel Islands, back to New York at the Chase Manhattan Bank and finally to Chase Manhattan Bank in Nassau, Bahamas. Defendant again claimed that a Bahamian company was supposed to pay the shipowners.

Defendant admitted involvement in the transactions but asserted that he was acting at the direction of others and was merely an innocent victim. At sentencing, the district judge found defendant's testimony "a tissue of perjury."

II. DISCUSSION

Appellant argues that the district court did not have jurisdiction over the offenses charged because he was a nonresident alien whose acts occurred outside the United States and had no detrimental effect within the United States. In connection with the Argentina and New Orleans transactions, defendant was charged with both wire fraud under 18 U.S.C. §1343 and transportation of funds obtained by fraud under 18 U.S.C. §2314.

Turning first to the former charges, defendant was convicted on four counts of wire fraud under §1343, reproduced in the margin.[1] Defendant admitted that, in

1. 18 U.S.C. §1343 provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

negotiating with the Manhattan shipowner for the shipment from Argentina, he had telephone and telex conversations with a ship broker in Bayshore, Long Island and that he caused other telex and telephone negotiations to occur between Manhattan and Hong Kong. These negotiations were to obtain ships to transport the grain, a key element of the fraud. The evidence was clearly sufficient to sustain jurisdiction on this offense, which forms the basis for count one. United States v. Hasenstab, 575 F.2d 1035, 1039-40 (2d Cir.), cert. denied, 439 U.S. 827 (1978). With respect to the shipments from New Orleans, defendant also admitted that he caused the payments received from the Chinese corporation to be electronically transferred through Manhattan banks to accounts in the Bahamas, the basis for counts three, four and five. This evidence was sufficient to justify asserting jurisdiction over defendant. As we found in United States v. Sindona, 636 F.2d 792, 802 (2d Cir. 1980), cert. denied, 451 U.S. 912 (1981), jurisdiction under §1343 is satisfied by defendant's use of the wires to obtain the proceeds of his fraudulent scheme.

With respect to the conviction on counts charging violations of §2314, reproduced in the margin,[2] defendant's jurisdictional argument depends on his premise that the section applies only to the transportation of tangible items and does not cover "electronic crediting and debiting," the means by which the funds in defendant's scheme moved from one bank to another. However, if such transfers of money are covered by §2314, defendant's attack on jurisdiction fails because the evidence clearly showed that

2. 18 U.S.C. §2314 provides, in pertinent part:

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud . . .

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

defendant had aided and abetted the transportation in foreign commerce through banks in Manhattan of "securities or money . . . taken by fraud." The question whether the section covers electronic transfers of funds appears to be one of first impression, but we do not regard it as a difficult one. Electronic signals in this context are the means by which funds are transported. The beginning of the transaction is money in one account and the ending is money in another. The manner in which the funds were moved does not affect the ability to obtain tangible paper dollars or a bank check from the receiving account. Indeed, we suspect that actual dollars rarely move between banks, particularly in international transactions. If anything, the means of transfer here were essential to the success of the fraudulent scheme. Defendant depended heavily on his ability to move funds rapidly out of reach of disgruntled shipowners who were to receive payment within days of loading the grain. And it was not until the funds, through a series of bank transfers, came to rest in the Bahamas that defendant's scheme was complete. See United States v. Sindona, 636 F.2d at 802. The record amply shows that the direct transfers of precise amounts received through fraud were in a manner clearly indicating that the fraud and transfer were a single transaction. The primary element of this offense, transportation, "does not require proof that any specific means of transporting were used." Pereira v. United States, 347 U.S. 1, 9 (1953). Therefore, since fraudulently obtained funds were transported within the meaning of the section and banks in Manhattan were utilized, there was sufficient evidence to support jurisdiction under §2314.[3]

3. The government argues that defendant transported "money" or, in the alternative, that he transported "securities." The court charged the jury that the transfers of funds fell "within one or more of the categories of securities or moneys." Since defense counsel stated explicitly that he had "no exceptions to the charge," we do not decide whether the transfers here were of one or the other or of both.

We turn next to appellant's argument that venue was improper in the Southern District of New York. Preliminarily, there is a real question whether defendant adequately raised the issue below; if he did not, the argument is waived. United States v. Price, 447 F.2d 23, 27 (2d Cir.), cert. denied, 404 U.S. 912 (1971). Defendant contends that he objected to venue in his motion for judgment of acquittal at the close of the government's case, but the government disputes this. The record indicates that defense counsel focused on jurisdiction rather than on venue in making his motion.

However, even if we accept the dubious assumption that defendant properly challenged venue at trial, the argument is without merit. Appellant claims that under 18 U.S.C. §3238, reproduced in the margin,[4] venue would be proper only in the district in which defendant was arrested, the District of Connecticut. But defendant relies on the wrong section; §3238 applies only to offenses "not committed in any district," as its title indicates. But that is not the situation here. The appropriate section to apply in this case is 18 U.S.C. §3237(a), which provides:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be in-

4. 18 U.S.C. §3238 provides:

Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

quired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves.

As already indicated, there were numerous telexes and telephone calls between New York and Hong Kong and other parts of the world. Also, the proceeds of the fraud were all transferred through New York so that "such commerce" moved "from, through, or into" the Southern District of New York. Therefore, venue was proper in that district under the section quoted above.

We have carefully considered the other arguments defendant raises and find them without merit.

The judgment is affirmed.

APPENDIX "B"
CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE 1, Section 9, Clause 3. Bill of attainder and ex post facto laws

No Bill of Attainder or ex post facto Law shall be passed.

ARTICLE II, Section 2, Clause 3. Criminal Trial by Jury

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX "C"
STATUTORY PROVISIONS INVOLVED

15 U.S.C. 1693

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§1693. Congressional Findings and declaration of purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90-321, Title IX, §902, as added Pub. L. 95-630, Title XX, §2001, Nov. 10, 1978, 92 Stat. 3728).

§1693a. Definitions

As used in this subchapter—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

. . . . . .

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i) of this title), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include:

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and

which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

§1693n. Criminal liability

Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

(a) Whoever knowingly and willfully:

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Violations affecting interstate or foreign commerce

(b) Whoever:

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $,1000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or

more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"Debit Instrument" defined

(c) As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

18 U.S.C. 10

§10. Interstate commerce and foreign commerce defined

The term "interstate commerce," as used in this title, includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

The term "foreign commerce," as used in this title, includes commerce with a foreign country.

18 U.S.C. 478

§478. Foreign obligations or securities

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. 488

§488. Making or possessing counterfeit dies for foreign coins

Whoever, within the United States, without lawful authority, makes any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or

Whoever, without lawful authority, possesses any such die, hub, or mold, or any part thereof, or conceals, or knowingly suffers the same to be used for the counterfeiting of any foreign coin:

Shall be fined not more than $5,000 or imprisoned not more than fivie years, or both.

18 U.S.C. 489

§489. Making or possessing likeness of coins

Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government shall be fined not more than $100.

18 U.S.C. 1343

§1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Added July 16, 1952, c. 879, §18(a), 66 Stat. 722, and amended July 11, 1956, c. 561, 70 Stat. 523.

18 U.S.C. 2311

§2311. Definitions

As used in this chapter:

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or for flight in the air;

"Cattle" means one or more bulls, steers, oxen, cows, heifers, or calves, or the carcass or carcasses thereof;

"Money" means the legal tender of the United States or of any foreign country, or any counterfeit thereof.

"Motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails;

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument of document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

"Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a State, or evidence of the discharge thereof;

"Value" means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

18 U.S.C. 2314

§2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely mak-

ing, forging, altering, or counterfeiting any security or tax stamps, or any part thereof:

Shall be fined not more than $10,000 or imprisoned not more than ten years or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

18 U.S.C. 3236

§3236. Murder or manslaughter

In all cases of murder or manslaughter, the offense shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered or other means employed which caused the death, without regard to the place where the death occurs.

18 U.S.C. 3237

§3237. Offenses begun in one district and completed in another

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted

in any district from, through, or into which such commerce or mail matter moves.

(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1954, or where an offense involves use of the mails and is an offense described in section 7201 or 7206(1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law), and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

18 U.S.C. 3238

§3238. Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

21 U.S.C. 955a

§955a. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels

Vessels of United States or vessels subject to jurisdiction of United States on high seas

(a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States on the high seas, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

Citizens of United States

(b) It is unlawful for a citizen of the United States on board any vessel to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

Vessels within customs waters of United States

(c) It is unlawful for any person on board any vessel within the customs waters of the United States to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

Intent or knowledge of unlawful importation into United States

(d) It is unlawful for any person to possess, manufacture, or distribute a controlled substance:

(1) intending that it be unlawfully imported into the United States; or

(2) knowing that it will be unlawfully imported into the United States.

Exceptions: burden of proof

(e) Subsections (a), (b), and (c) of this section do not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of his duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

Jurisdiction and venue

(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court for the District of Columbia.

Penalties

(g)(1) Any person who commits an offense defined in subsection (a), (b), (c) or (d) of this section shall be punished in accordance with the penalties set forth in section 960 of this title.

(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under sections 955a to 955d of this title shall be punished in accordance with the

penalties set forth in section 962 of this title if such offense is a second or subsequent offense as defined in section 962(b) of this title.

Extension beyond territorial jurisdiction of United States

(h) This section is itnended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

47 U.S.C. 153

§153. Definitions

For the purposes of this chapter, unless the context otherwise requires:

(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this chapter.

. . . . . .

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter, include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

Federal Rules of Evidence

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) **Character of victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) **Character of witness.** Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.